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By Lanette Buffin, Deputy

6 *Additional counsel listed in Appendix A*

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14
15 OVERSTOCK.COM, INC.,
a Corporation; and
16 DOES 1-10

17 Defendant.

NO.

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10 - 546833
**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF**

19 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, brings this action by and
20 through: Nancy E. O'Malley, District Attorney of Alameda County, Matthew L. Beltramo,
21 Deputy District Attorney; Edward S. Berberian, District Attorney of Marin County, Andres H.
22 Perez, Deputy District Attorney; Dean D. Flippo, District Attorney of Monterey County, James
23 R. Burlison, Deputy District Attorney; Gary Lieberstein, District Attorney of Napa County,
24 Daryl A. Roberts, Deputy District Attorney; Dolores A. Carr, District Attorney of Santa Clara
25 County, Kenneth Rosenblatt, Supervising Deputy District Attorney; Gerald C. Benito, District
26 Attorney of Shasta County, Erin M. Dervin, Deputy District Attorney, Stephan R. Passalacqua;
27

1 District Attorney of Sonoma County, Matthew T. Cheever, Deputy District Attorney. Plaintiff
2 alleges upon information and belief the following:

3
4 **JURISDICTION, VENUE, AND TOLLING OF STATUTE OF LIMITATIONS**

5 1. The authority of the Plaintiff to bring this action on behalf of the People of the
6 State of California is derived from the statutory law of the State of California, *inter alia*
7 Business and Professions Code §§ 17500, 17535, 17536, 17200, 17204, and 17206, and Civil
8 Code Section 1770.

9 2. The defendant, Overstock.com, Inc. (“Overstock”), transacts business within the
10 counties of Alameda, Marin, Monterey, Santa Clara, Shasta, and Sonoma (hereinafter referred
11 to as “the Counties”) and elsewhere in the State of California. The violations of law alleged
12 herein have been carried out within the Counties and throughout the State of California.

13 3. Plaintiff and Overstock have entered into a series of agreements to toll any
14 applicable statutes of limitation. As a result of those agreements, each day from March 24,
15 2010 up to and including the date of the filing of this Complaint (hereinafter referred to as the
16 "Tolling Period") will not be included in computing the time limited by any statutes of
17 limitation applicable to any and all causes of action brought against Overstock based on claims
18 covered by the tolling agreement. Those claims include each of the causes of actions and
19 claims alleged in this lawsuit against Overstock.

20
21 **DEFENDANT OVERSTOCK.COM, INC.**

22 4. Defendant Overstock is a Delaware corporation located at 6350 S. 3000 E., Salt
23 Lake City, Utah, 84121.

24 5. Overstock is an online retailer that sells consumer goods (hereinafter referred to
25 as “products”) over the Internet to members of the public throughout the Counties and the State
26 of California, and in other states in the United States. Overstock, and all DOE defendants and
27

1 each of them, transact business within each of the Counties and throughout the State of
2 California.

3 6. Whenever reference is made in this complaint to any act of Overstock, such
4 reference shall be deemed to mean that the corporation's officers, employees, agents, or
5 representatives did, ratified or authorized such act while actively engaged in the management,
6 direction or control of the affairs of said corporate defendant or while acting within the scope
7 and course of their duties.

8 7. Whenever reference is made in this complaint to any act of defendants, such
9 allegations shall be deemed to mean the act of each defendant acting jointly and severally.

10 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein
11 as DOES 1 through 10, inclusive, and therefore sues those defendants by these fictitious
12 names. Plaintiff alleges that said defendants, and each of them, performed each of the acts
13 alleged below. Each reference in this complaint to defendant Overstock is also a reference to
14 all defendants sued as DOES.

15
16 **SUMMARY OF ALLEGATIONS**

17 9. Beginning on a date no later than January 1, 2006, Overstock routinely and
18 systematically made untrue and misleading comparative advertising claims about the prices of
19 its products.

20 10. Overstock compared the prices of its products, labeled as "Today's Price", with
21 prices supposedly charged by other merchants for the same products. Overstock labeled those
22 comparative prices the "List Price" (before November 2007) and the "Compare At Price"
23 (thereafter) for those products.

24 11. However, in advertising the "List Price" and "Compare At Price" for a product,
25 Overstock was not actually presenting the prevailing market price for that product, *i.e.*, the
26 price at which other merchants were selling the identical product. Rather, Overstock used
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1 various misleading measures to inflate the comparative prices, and thus artificially increase the
2 discounts it claimed to be offering consumers.

3 12. For example, on some occasions Overstock instructed its employees to choose
4 the *highest price* at which a product was selling in the marketplace, and present this price to
5 consumers as the “List Price” or “Compare At Price” for that product. For some products,
6 Overstock fabricated a “List Price” or “Compare At Price” by applying a pre-set formula
7 incorporating a hefty profit margin over its wholesale cost, without ascertaining whether the
8 product in question had ever been offered for sale by any merchant, including Overstock, at
9 that high price.

10 13. On information and belief, Plaintiff alleges that Overstock’s untrue and
11 misleading representations accompanied virtually every product listing on its site beginning no
12 later than January 1, 2006, and that Overstock is still making such untrue and misleading
13 comparative claims for many of the products on its site.

14 15 **GENERAL ALLEGATIONS**

16 14. Unless otherwise stated, on each and every day starting on January 1, 2006
17 through to the present, Overstock committed each and every act alleged in paragraphs 15
18 through 100 below.

19 15. Overstock is an Internet retailer. Overstock offers products for sale over the
20 Internet to consumers on a web site, “Overstock.com”, accessible to consumers and located at
21 www.overstock.com. That web site is hereinafter referred to as “the site”.

22 16. Overstock represents itself as a seller of distressed, second-hand, or
23 discontinued products and/or products sold as part of liquidations of inventory by
24 manufacturers or vendors. Overstock has represented itself to consumers as “Your Online
25 Outlet”, which “offers liquidations, seconds, and manufacturer cancellations, at huge savings.”
26 It currently describes itself as “an online retailer offering a wide variety of high-quality, brand-
27 name merchandise at discount prices [w]e give customers an opportunity to shop for
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1 bargains conveniently, while offering manufacturers, distributors and other retailers an
2 alternative sales channel for liquidating their inventory.”

3 17. Overstock represents to consumers that it is in a unique position to offer the
4 lowest prices available on the Internet because of the types of products it buys, and the
5 circumstances under which it buys those products.

6 18. Overstock has represented, and may currently represent, that the prices
7 consumers pay for its products will be the lowest prices at which those products are offered for
8 sale on the Internet.

9 19. Overstock purported, and may still purport to back that claim with a “Best Price
10 Guarantee” that the prices which consumers pay for its products will be the lowest prices at
11 which those products are offered for sale on the Internet.

12 20. However, Overstock does not always offer the lowest prices available online for
13 the products it sells. In some cases, it charges significantly higher prices for those products
14 than other merchants selling the identical products.

15 21. As alleged in detail below, beginning at a date unknown to Plaintiff, but no later
16 than January 1, 2006, Overstock has routinely and systematically made untrue and misleading
17 comparative advertising claims about the prices which other merchants charge for the identical
18 products offered by Overstock.

19 22. Often Overstock has not been determining or verifying the prices other
20 merchants charge for those identical products. Rather Overstock has been using various
21 misleading methods to make up its own “straw-man” prices which it claims other merchants
22 are charging for those products, and then claiming that its own prices are significantly lower
23 than those prices.

24 23. Overstock has advertised comparative prices which do not exist (*i.e.*, simply
25 making up a price supposedly charged by other merchants).

26 24. When Overstock actually examined what merchants were charging for identical
27 products, Overstock often deliberately chose *the highest price* charged for that product by any
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1 merchant instead of the price offered by most merchants for that product. These representations
2 were likely to mislead consumers into believing that Overstock's prices were significantly
3 lower than the prices offered by other merchants.

4 25. For example, in 2007, Overstock sold a patio set on its site for \$449.00. It
5 claimed that the "List Price" for that patio set was \$999.99. The consumer who ordered the
6 item noted that it came in a box with a Wal-Mart sticker showing the sales price to be \$247.00.
7 Wal-Mart was in fact offering the same patio set at \$247.00 (and later, on clearance, as low as
8 \$218.00) on its web site. Overstock's "List Price" of \$999.00 for the patio set was untrue and
9 misleading.

10 26. Overstock knew or should have known that its representations concerning other
11 merchants' prices for identical products were untrue and misleading.

12 27. Overstock's representations were likely to mislead consumers into believing
13 that Overstock's prices were significantly lower than the prices offered by other merchants for
14 the identical products, and that consumers would enjoy significant savings by purchasing those
15 products from Overstock instead of from other merchants.

16 28. For example, in the patio set example above, Overstock advertised that it
17 offered a product for 55% less than the price for which that product was being offered in the
18 marketplace, when in fact it charged 82% *more* than Wal-Mart's price for the same product;
19 that misrepresentation made it more likely that consumers would purchase that product from
20 Overstock. Indeed, for some products, Overstock's misleading claims of a huge discount were
21 likely to persuade consumers who were not inclined to purchase the product at all to buy it
22 from Overstock solely because they were misled into believing that they were getting an
23 unusually good deal.

24 29. Overstock's misrepresentations about its pricing were likely to mislead
25 consumers into believing that Overstock's prices would always be significantly lower than the
26 prices offered by other merchants for the identical products. Such misrepresentations were
27 likely to discourage consumers from making the effort to search elsewhere for lower prices.

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Overstock's False Comparative Advertising Claims

30. Overstock advertised each product offered for sale on a page on its site. Such pages are hereinafter referred to as "product pages". A true and correct copy of such a page is attached hereto and incorporated by reference herein as Exhibit 1.

31. The typical product page featured a photograph or other visual depiction of the product, accompanied by a written description of the product. The page included the price at which Overstock offered that particular product to consumers—called "Today's Price". The page also usually included a different, and higher, price representing the price at which other merchants were supposedly selling that same product. For example, in Exhibit 1, a patio set is listed with a "Today's Price" of \$999.00, and a "List Price" of \$449.99. This higher price (the "List Price") is hereinafter referred to as the "Comparison Price".

32. Until on or about and between September and October 2007, Overstock referred to that Comparison Price as the "List Price"; it thereafter changed its nomenclature to refer to it as the "Compare at" price. These two iterations are discussed separately below.

Overstock's Misleading Method of Determining Its "List Price"

33. Overstock set the "List Price" for each product higher than the "Today's Price" for that product. (See e.g., Exhibit 1.)

34. Overstock used the phrase "You Save" to represent the difference between its "List Price" and "Today's Price", typically in the following format (see Exhibit 1 for an example):

List Price:
-Today's Price:
You Save. (__%)

1 The List Price quotations were struck through in an “overstrike” font. Consumers were likely
2 to assume that this “strikethrough” denoted a price reduction by Overstock from the “List
3 Price” to Today’s Price”.

4 35. This depiction of prices represented to consumers that: (1) the “List Price” was
5 the price at which the product typically sold in the marketplace, from which Overstock had
6 offered a discount for this occasion, with the discounted price represented as “Today’s Price”;
7 and (2) that the “You Save” amount represented the amount of discount Overstock was offering
8 on that product. This impression was reinforced by Overstock’s depiction of the savings as
9 both a dollar amount and as a percentage off the “List Price.” For example, in Exhibit 1,
10 Overstock represented that the patio furniture set customarily sold for \$999.00, that it could be
11 purchased on the spot for “Today’s Price” of \$449.99, and that such a purchase would yield a
12 discount, or “savings”, to the consumer of \$549.01 (55%).

13 36. The ordinary and customary meaning of the term “list price” is the price at
14 which a product is typically offered to the public, subject to discount. *See* Merriam-Webster
15 Online Dictionary (“the basic price of an item as published in a catalog, price list, or
16 advertisement before any discounts are taken”); Webster’s New World College Dictionary
17 (“retail price as given in a list or catalog, variously discounted in sales to dealers”).

18 37. The Federal Trade Commission “Guides Against Deceptive Pricing” is in
19 accord:

20 “Typically, a list price is a price at which articles are sold, if not everywhere,
21 then at least in the principal retail outlets which do not conduct their business on
22 a discount basis. It will not be deemed fictitious if it is the price at which
23 substantial (that is, not isolated or insignificant) sales are made in the
24 advertiser’s trade area (the area in which he does business). Conversely, if the
25 list price is significantly in excess of the highest price at which substantial sales
26 in the trade area are made, there is a clear and serious danger of the consumer
27 being misled by an advertised reduction from this price.”

1 *Id.*, 16 Code of Federal Regulations, Section 233.3(d) (available on the FTC web
2 site at <http://www.ftc.gov/bcp/guides/decptprc.htm>)
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4 38. Overstock's use of the term "List Price" in its advertisements did not conform to
5 the FTC definition or to the common meaning of that phrase. In deciding on a price to
6 advertise as the "List Price" for a product, Overstock did not set the "List Price" based on a
7 price at which articles are sold, if not everywhere, then at least in the principal retail outlets
8 which do not conduct their business on a discount basis.

9 39. Overstock was often ignorant of the price at which other merchants were selling
10 the identical products to consumers, meaning that Overstock did not know whether the "List
11 Price" it advertised accurately reflected the price at which the product was typically offered in
12 the marketplace.

13 40. Overstock failed to verify that its "List Price" for products corresponded with "a
14 price at which [those products] are sold, if not everywhere, then at least in the principal retail
15 outlets which do not conduct their business on a discount basis."

16 41. Overstock's advertisement of its "List Price" was likely to mislead consumers
17 by purporting to offer a savings when compared to the prices offered by other merchants for
18 the identical products. This misuse of the term "List Price" allowed Overstock to represent
19 that it was offering the consumer a huge discount (the amount listed as "You Save") off the
20 prevailing market price. Said representations were untrue and misleading.

21 42. As in the Wal-Mart patio set example, *supra*, the result of Overstock's
22 ignorance of the accuracy of its "List Price", and its failure to verify that accuracy, was that
23 consumers were on occasion misled into spending more money to purchase Overstock's
24 products than they would have paid to purchase an identical product from other merchants.

25 43. Overstock was placed on notice in 2004 that its claims about "List Price" were
26 not properly verified and were untrue and misleading. Attached to and incorporated by
27 reference herein as Exhibit 4 to this Complaint is a true and correct copy of an article which
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1 appeared in the online edition of Business Week on March 15, 2004. The article reported
2 discrepancies between Overstock's "List Price" for items and the manufacturers' retail prices
3 for same, and includes the following information:

4 "Spot checks by BusinessWeek found close to 100 instances where Overstock
5 misstated the manufacturer's suggested list price on items like digital cameras,
6 clothes, and TVs. The \$240 million e-tailer carries about 12,000 items, outside
7 of its huge book and music store. For a few, it undershot the list price. But most
8 errors made discounts seem larger. "If they've falsely claimed what the
9 manufacturer's list price is, that's not lawful," says Andrea Levine, a director of
10 the Council of Better Business Bureaus.

11 [Overstock CEO Patrick] Byrne^[1] says there was no intentional deception. He
12 blames most slips on manufacturers' changing list prices. "We bend over
13 backwards to get this right," he says."

14 Overstock: The Price Isn't Always Right, Business Week, March 15, 2004.²

15
16 44. Despite Mr. Byrne's claims on that occasion, by no later than January 1, 2006,
17 and thereafter until the present, Overstock in fact knew that its Comparison Price for many
18 products was higher than the price at which other merchants were selling identical products to
19 consumers.

20 45. For example, for many of the products it offered for sale on or after January 1,
21 2006, Overstock employees calculated the "street price" for those products. For purposes of
22 this Complaint, Plaintiff defines the "street price" for a product as the lowest price at which a
23 consumer would commonly be able to purchase the identical product on the Internet or at a
24 retail establishment in the consumer's area.

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26 ¹ Patrick Byrne remains Overstock's CEO.

27 ² As of July 23, 2007, when the People first received the consumer complaint discussed in paragraph 107, *infra*,
28 the People had no knowledge of this article or the allegations made within it.

1 46. In many cases this “street price” was lower, often significantly lower, than the
2 “List Price” price advertised by Overstock, and Overstock knew it. However, Overstock
3 would advertise a higher “List Price” for that product even though it did not know whether
4 substantial sales were being made at that higher price by any other merchant. Overstock did so
5 to make its “Today’s Price” appear to be the lowest price commonly available so that
6 consumers would purchase the product from Overstock instead of from other merchants. This
7 substitution rendered Overstock’s advertisement of its “List Price” price (and the
8 corresponding “You Save” dollar figure) untrue and misleading, and Overstock knew or should
9 have known that its representation of “List Price” and “You Save” in such cases was untrue
10 and misleading.

11 47. As alleged in more detail below, currently approximately 80% of Overstock’s
12 merchandise is actually sold via “Fulfillment Partners,” that is, third-party retailers who use
13 Overstock’s web site merely as a platform for sales of their own products. Those products are
14 hereinafter referred to as “Partner Products”. Overstock enlisted those Partners in determining
15 “street prices” for the Partner Products sold on the site, and then chose to advertise a higher
16 “List Price”.

17 48. Overstock used two other unlawful and unfair methods to set the “List Price”
18 for products. First, Overstock often relied on *the highest sales price* at which another merchant
19 was offering the identical product for sale in setting the “List Price” for that product, regardless
20 of whether that “List Price” exceeded the price at which the product was typically offered at
21 retail by other merchants. Overstock knew or should have known that choosing the highest
22 sales price as the “List Price” rendered its comparative price claim, and the corresponding
23 “You Save” claim, untrue and misleading. For Partner products, Overstock enlisted the
24 Partner’s assistance in finding the highest such price charged in the marketplace for that
25 product, even though both Overstock and the Partner knew that said price would be higher than
26 the price at which other merchants typically offered that product for sale to consumers.

1 49. Second, Overstock created fictitious "List Prices" for certain Partner products.
2 Instead of choosing as the "List Price" a price which other merchants charged for an identical
3 product, Overstock directed the Partner offering that product through Overstock to construct
4 the "List Price" by working backwards from the "Today's Price" set by Overstock.

5 50. The first step in setting this fictional "List Price" was for Overstock and its
6 Partner to agree on the price Overstock would pay to the Partner upon the sale of the Partner's
7 particular product.

8 51. For example, assume that Overstock agreed to allow a Partner to sell a cell
9 phone charger on its site. Overstock and the Partner would agree on the amount that Overstock
10 would pay to the Partner on the sale of each charger, say, \$8.00. Overstock would then apply
11 its own markup to that wholesale price to arrive at the "Today's Price" at which it would sell
12 the product to the public. If that markup was 25%, then the "Today's Price" for that cell phone
13 charger would be \$10.00. Either the Partner or Overstock would then fabricate a "List Price"
14 based on an arbitrary markup dictated by Overstock to create the appearance of a substantial
15 difference between the "List Price" and the "Today's Price". If that markup were 50%,
16 Overstock would advertise a "List Price" for that cell phone charger at \$15.00; the difference
17 between that "List Price" and the "Today's Price" (\$5.00) would be represented as the amount
18 of the discount (*i.e.*, the "You Save" amount). This "formula pricing" ensured that the
19 "Today's Price" always appeared to represent a large discount from the price Overstock
20 advertised as the prevailing price of the product.

21 52. However, when creating that fictitious "List Price", despite Overstock's
22 representations on its site that it had confirmed that each product had in fact been sold at its
23 "List Price" in at least one instance, and its "Best Price Guarantee" promising consumers that
24 Overstock offered the lowest prices for items online, Overstock failed to ascertain or determine
25 whether another merchant was offering the same product for something less than the "List
26 Price" (in this example of the cell phone charger, for less than \$15.00). Instead of verifying
27 that its "List Price" represented a price at which articles are sold, if not everywhere, then at
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1 least in the principal retail outlets which do not conduct their business on a discount basis,
2 Overstock simply advertised a fictitious price as the "List Price" for that product.

3 53. Overstock's advertisement of a fictitious "List Price" was likely to mislead
4 consumers by purporting to offer a savings when compared to the prices offered by other
5 merchants for the identical products. This misuse of the term "List Price" allowed Overstock
6 to represent, falsely and misleadingly, to have offered consumers a huge discount ("You Save")
7 off the prevailing market price.

8 54. In some cases Overstock believed that there was no comparable price for the
9 product because it had not been previously offered in the United States and/or through standard
10 retail channels. In those instances, Overstock could have refrained from advertising a "List
11 Price" at all and left consumers to do their own comparative shopping in order to decide for
12 themselves whether the Overstock product offered sufficient value at the advertised price.

13 55. However, rather than leave the "List Price" entry blank (*i.e.*, not advertise a
14 "List Price" at all for that product), Overstock simply made up a "List Price" for that product.
15 Overstock's decision to advertise a price which did not exist was likely to deceive consumers
16 by representing that the marketplace had assigned a retail price to that product and that
17 Overstock's "discount" off that retail price made Overstock's price attractive. Overstock's
18 representation of that price as an actual price being charged for that product was more than just
19 unlawful and unfair—it was fraudulent.

20 56. Overstock knew or should have known that creating either a fictitious or
21 inflated "List Price" to create a fictitious or inflated discount was unlawful and unfair. As
22 stated in the Federal Trade Commission's "Guides Against Deceptive Pricing", *supra*, Section
23 233(i):

24 "It bears repeating that the manufacturer, distributor or retailer must in every
25 case act honestly and in good faith in advertising a list price, and not with the
26 intention of establishing a basis, or creating an instrumentality, for a deceptive
27 comparison in any local or other trade area. For instance, a manufacturer may
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1 not affix price tickets containing inflated prices as an accommodation to
2 particular retailers who intend to use such prices as the basis for advertising
3 fictitious price reductions.”

4 *Id.*, 16 Code of Federal Regulations, Section 233.3(i) (available on the FTC web
5 site at <http://www.ftc.gov/bcp/guides/decptprc.htm>)

6
7 57. The use of the term “List Price” by Overstock on its product pages constituted
8 the dissemination of an untrue and misleading statement over the Internet to consumers about
9 the price of the product listed on that product page as compared with the prices offered by
10 other merchants for the same product. Overstock knew, or by the exercise of reasonable care
11 should have known, that those statements were untrue and misleading. Those statements
12 constituted separate violations of California Business and Professions Code Section 17500.
13 Those statements also violated California Civil Code Section 1770(a)(13) (prohibition against
14 “making false or misleading statements of fact concerning reasons for, existence of, or amounts
15 of price reductions”).

16 58. Each and every use of the term “You Save” by Overstock on its product pages
17 in connection with a “List Price” constituted the dissemination of an untrue and misleading
18 statement over the Internet to consumers about the savings, if any, that consumers would
19 realize by purchasing that product from Overstock instead of from another merchant.
20 Overstock knew, or by the exercise of reasonable care should have known, that each of those
21 statements was untrue and misleading. Each of those statements constituted a separate
22 violation of California Business and Professions Code Section 17500. Each of those
23 statements also violated California Civil Code Section 1770(a)(13) (prohibition against
24 “making false or misleading statements of fact concerning reasons for, existence of, or amounts
25 of price reductions”).

26
27 *Overstock’s Equally Misleading Method of Determining Its “Compare At” Price*

1 59. On or about and between September 27, 2007 and October 5, 2007, after
2 Plaintiff began inquiring into the deceptive nature of the term "List Price", Overstock
3 substituted a new term: the "Compare at" price (hereinafter referred to as the "Compare At
4 Price"). Exhibit 2, attached hereto and incorporated by reference herein, is a true and correct
5 copy of an Overstock product page using the "Compare At Price".

6 60. Although the nomenclature was different, the deceptive strategy was the same:
7 Overstock continued the practices outlined in paragraphs 33-58 above in setting, and
8 representing, the price at which other merchants were selling identical products.

9 61. Overstock's depiction of prices on its product pages remained the same as
10 described above, with the only difference being that the term "List Price" was replaced by the
11 term "Compare at". This arrangement represented to consumers that: (1) the "Compare At
12 Price" was the price at which the product typically sold in the marketplace, from which
13 Overstock had offered a discount for this occasion ("Today's Price"); and (2) that the "You
14 Save" amount represented the amount of discount Overstock was offering on that product.
15 Overstock continued to reinforce this impression by depicting the "You Save" number as both
16 a dollar amount and as a percentage off the "Compare At Price".

17 62. A reasonable consumer would interpret a "Compare At Price" as the price at
18 which a substantial number of vendors are selling the identical product. As the Federal Trade
19 Commission Fictitious Pricing Guide states:

20 "Whenever an advertiser represents that he is selling below the prices being
21 charged in his area for a particular article, he should be reasonably certain that
22 the higher price he advertises does not appreciably exceed the price at which
23 substantial sales of the article are being made in the area -- that is, a sufficient
24 number of sales so that a consumer would consider a reduction from the price to
25 represent a genuine bargain or saving."

26 16 Code of Federal Regulations 233.2(a).

1 63. Overstock's use of the term "Compare at" in its advertisements did not conform
2 to the Guide. In deciding on a price to advertise as the "Compare At Price" for a product,
3 Overstock did not take care to ensure that the "Compare At Price" did not appreciably exceed
4 the price at which substantial sales of the article were being made.

5 64. Overstock was often ignorant of the price at which other merchants were selling
6 the identical products to consumers, meaning that Overstock did not know whether the
7 "Compare At Price" it advertised accurately reflected the price at which the product was
8 typically offered in the marketplace.

9 65. Overstock failed to verify that its "Compare At Price" for products did not
10 exceed the price at which substantial sales of the product were being made in the marketplace.

11 66. Overstock's advertisement of its "Compare At Price" was likely to mislead
12 consumers by purporting to offer a savings when compared to the prices offered by other
13 merchants for the identical products. This misuse of the term "Compare At Price" allowed
14 Overstock to represent that it was offering the consumer a huge discount ("You Save") off the
15 prevailing market price. Said representations were untrue and misleading.

16 67. The result of Overstock's ignorance of the accuracy of its "Compare At Price",
17 and its failure to verify that accuracy, was that consumers were on occasion misled into paying
18 more for Overstock's products than they would have paid for identical products sold by other
19 merchants.

20 68. Moreover, in many cases Overstock *in fact knew* that its "Compare At Price"
21 was higher than the price at which other merchants were selling identical products to
22 consumers. For many of the products it offered for sale, Overstock employees and its
23 Fulfillment Partners (for the products sold by those Partners) actually went to the trouble of
24 calculating the "street price" for the product in an attempt to determine what price to list as the
25 "Compare At Price".

26 69. Again, as alleged previously, for purposes of this Complaint, plaintiff defines
27 the "street price" for a product as the lowest price at which a consumer would commonly be
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1 able to purchase the identical product on the Internet or at a retail establishment in the
2 consumer's area. In many cases this "street price" was lower, often significantly lower, than
3 the "Compare At Price" price advertised by Overstock, and Overstock knew it. The practice of
4 advertising a "Compare At Price" that was higher than the "street price" rendered the
5 "Compare At Price" price (and corresponding "You Save" dollar figure) untrue and misleading;
6 Overstock knew or should have known that its representation of "Compare At Price" and the
7 corresponding "You Save" dollar amount in such cases was untrue and misleading.

8 70. Overstock used two other unlawful and unfair methods to set the "Compare At
9 Price" for products. First, Overstock often relied on *the highest sales price* at which another
10 merchant was offering the identical product for sale in setting the "Compare At Price" for that
11 product, regardless of whether that price exceeded the price at which the product was typically
12 offered at retail by other merchants. Overstock knew or should have known that choosing the
13 highest sales price as the "Compare At Price" rendered its comparative price claim, and the
14 corresponding "You Save" claim, untrue and misleading. For Partner products, Overstock
15 enlisted the Partner's assistance in finding the highest such price charged in the marketplace
16 for that product, even though both Overstock and the Partner knew that said price would be
17 higher than the price at which other merchants typically offered that product for sale to
18 consumers.

19 71. Second, Overstock created fictitious "Compare At Prices" for certain Partner
20 products. Instead of choosing as the "Compare At Price" a price which other merchants
21 charged for an identical product, Overstock directed the Partner offering that product through
22 Overstock to construct the "Compare At Price" by working backwards from the "Today's
23 Price" set by Overstock.

24 72. The first step in setting this fictional "Compare At Price" was for Overstock and
25 its Partner to agree on the price Overstock would pay to the Partner upon the sale of the
26 Partner's particular product. As discussed in paragraph 51 above with respect to "List Price",
27 Overstock would then fabricate a "Compare At Price" based on an arbitrary markup dictated by
28

1 Overstock to create the appearance of a substantial discount between the “Compare At Price”
2 and the “Today’s Price”. This “formula pricing” ensured that the “Today’s Price” always
3 appeared to represent a large discount from the price Overstock advertised as the prevailing
4 price of the product.

5 73. However, when creating that fictitious “Compare At Price”, Overstock failed to
6 ascertain or determine whether another merchant was offering the same product for something
7 less than the “Compare At Price”. Instead of verifying that its “Compare At Price” represented
8 a price at which articles are sold, if not everywhere, then at least in the principal retail outlets
9 which do not conduct their business on a discount basis, Overstock simply advertised a
10 fictitious price as the “Compare At Price” for that product.

11 74. Overstock’s advertisement of a fictitious “Compare At Price” was likely to
12 mislead consumers by purporting to offer a savings when compared to the prices offered by
13 other merchants for the identical products. This misuse of the term “Compare At Price”
14 allowed Overstock to represent, falsely and misleadingly, to have offered consumers a huge
15 discount (“You Save”) off the prevailing market price.

16 75. In some cases Overstock believed that there was no comparable price for the
17 product because it had not been previously offered in the United States and/or through standard
18 retail channels.

19 76. In these circumstances, Overstock could have refrained from advertising a
20 “Compare At Price” and allowed consumers to do their own comparative shopping to decide
21 whether the product offered sufficient value at the price stated. Overstock’s decision to
22 advertise a price which did not exist was likely to deceive consumers by representing that the
23 marketplace had assigned a retail price to that product, and that Overstock’s “discount” off that
24 retail price made Overstock’s price attractive. Overstock’s representation of that price as an
25 actual price being charged for that product was more than just unlawful and unfair—it was
26 fraudulent.

1 77. Overstock knew or should have known that creating either a fictitious or
2 inflated “Compare At Price” to create either a fictitious or inflated discount, was unlawful.

3 78. The use of the term “Compare At Price” by Overstock on its product pages
4 constituted the dissemination of an untrue and misleading statement over the Internet to
5 consumers about the price of the product listed on that product page as compared with the
6 prices offered by other merchants for the same product. Overstock knew, or by the exercise of
7 reasonable care should have known, that those statements were untrue and misleading. Those
8 statements constituted separate violations of California Business and Professions Code Section
9 17500. Those statements also violated California Civil Code Section 1770(a)(13) (prohibition
10 against “making false or misleading statements of fact concerning reasons for, existence of, or
11 amounts of price reductions”).

12 79. The use of the term “You Save” by Overstock on its product pages in
13 connection with a “Compare At Price” constituted the dissemination of an untrue and
14 misleading statement over the Internet to consumers about the savings, if any, that consumers
15 would realize by purchasing that product from Overstock instead of from another merchant.
16 Overstock knew, or by the exercise of reasonable care should have known, that those
17 statements were untrue and misleading. Those statements constituted separate violations of
18 California Business and Professions Code Section 17500. Those statements also violated
19 California Civil Code Section 1770(a)(13) (prohibition against “making false or misleading
20 statements of fact concerning reasons for, existence of, or amounts of price reductions”).

21
22 ***Overstock’s Own Definitions of “List Price” and “Compare At” Were Untrue and
Misleading***

23 80. At a time unknown to Plaintiff, Overstock placed its own unique definitions of
24 the terms “List Price” and, later, “Compare At” price on the site. Plaintiff does not know at
25 this time whether those definitions were present on the site at all times beginning on January 1,
26 2006.

1 81. These definitions were not placed on the same page as the page displaying the
2 product. Consumers would have had to follow a hyperlink to access them.

3 82. As the FTC noted in “Dot-Com Disclosures: Information About Online
4 Advertising”:

5 With hyperlinks, additional information, including disclosures, might be placed
6 on a Web page entirely separate from the relevant claim. Disclosures that are an
7 integral part of a claim or inseparable from it, however, should be placed on the
8 same page and immediately next to the claim. In these situations, the claim and
9 the disclosure should be read at the same time, without referring the consumer
10 somewhere else to obtain the disclosure. *This is particularly true for cost*
11 *information* or certain health and safety disclosures.

12 Page 7 (emphasis added).

13 83. Critically, the hyperlinks to the definitions of “List Price” and “Compare At”
14 were virtually invisible—they were apparent *only* if a consumer placed the cursor on top of the
15 phrase (*i.e.*, “List Price”, or later, “Compare At”). At that point, and only that point, the phrase
16 would change color, alerting the consumer that there was more information available if the
17 consumer clicked on the phrase. In other words, the typical consumer who did not suspect that
18 Overstock was using its own definition of those phrases and therefore did not look carefully for
19 a hyperlink by “mousing” over the non-descript term (which was the same in color and
20 appearance as the surrounding text) would never encounter those definitions.

21 84. Again, the Federal Trade Commission makes clear the inadequacy of such a
22 purported “disclosure”.

23 In reviewing their online ads, advertisers should adopt the perspective of a
24 reasonable consumer. They also should assume that consumers don’t read an
25 entire Web site, just as they don’t read every word on a printed page. In addition,
26 it is important for advertisers to draw attention to the disclosure. *Making the*
27

1 *disclosure available somewhere in the ad so that consumers who are looking for*
2 *the information might find it doesn't meet the clear and conspicuous standard.*

3 Page 4 (emphasis added).

4 85. Even if Overstock's definitions could be considered to be adequate disclosures
5 of its pricing practices, the disclosures were illusory, and to the extent that they could be
6 understood at all, so contrary to the standard definition of those terms that Overstock's
7 representations concerning its Comparison Price remained untrue and misleading.

8 86. Moreover, the definitions themselves contained statements that were untrue and
9 misleading, and constituted separate violations of California's consumer protection laws. Most
10 notably, Overstock's "List Price" definition began with the statement that "[i]n most cases, list
11 price is the price for the product, new and unused, as recommended by the manufacturer for
12 retail sale, and *Overstock.com has confirmed at least one instance in which the product is*
13 *being sold at that price.*" (Emphasis added.)

14 87. In fact, Overstock did not always confirm that identical products were sold at
15 the "List Price" it listed for those products. Rather, Overstock either fabricated its "List Price",
16 or set it without confirming that identical products had been offered for sale previously at said
17 price in even one instance.

18 88. Only after Plaintiff began investigating Overstock's pricing practices did
19 Overstock seek to verify its products were being sold in at least one instance at the "List Price"
20 it was advertising.

21
22 *Overstock's Misleading Comparisons Relating to Associated Costs (E.g., Shipping)*

23 89. In setting both its "List Price" and "Compare At Price", Overstock would
24 include associated costs, including but not limited to taxes, fees, shipping or handling costs,
25 charged by other merchants for the same products offered by Overstock.

26 90. However, when advertising its "Today's Price" for those identical products, it
27 would often omit its own charges for such items.

1 91. This “apples and oranges” comparison would inflate the “You Save” amount
2 advertised to the consumer, making the advertisement of the purported savings to consumers
3 untrue and misleading.

4 92. In some cases, Overstock would advertise “free shipping” when it (or at its
5 behest, its Fulfillment Partners), had already factored in the cost of shipping when setting the
6 “Today’s Price” for the product. The “free shipping” representation implied to the consumer
7 that he or she was getting a special deal, when in fact the “Today’s Price” had been inflated to
8 include a hidden shipping charge. The Federal Trade Commission specifically prohibits such
9 untrue and misleading advertising of something for “free” which is not actually “free”.

10
11 ***Overstock’s Untrue and Misleading Claims About The Nature Of Its Business***

12 93. Overstock’s untrue and misleading statements about its “List Price” and
13 “Compare At Prices” were especially likely to mislead consumers because they accompanied
14 Overstock’s untrue and misleading claims about the nature of its business.

15 94. Consumers who accepted Overstock’s claims that its business model was to act
16 as “an alternative sales channel for [businesses] liquidating their inventory” were likely to
17 assume that Overstock—consistent with its name—was primarily in the business of purchasing
18 and reselling liquidated, or “overstocked,” merchandise.

19 95. However, according to a recent 10K filing by Overstock with the United States
20 Securities and Exchange Commission, approximately 80% of Overstock’s sales by unit volume
21 are Partner Products, as opposed to products owned by Overstock and shipped from its own
22 warehouses. Overstock conducts such business with approximately 1,250 Fulfillment Partners.

23 96. Overstock does not take possession of those products; each Fulfillment Partner
24 ships its products directly to Overstock’s customers. Thus, Overstock is serving as a retail
25 outlet for those products.

26 97. Overstock has never disclosed to consumers that it does not own, store, and/or
27 ship the Partner Products. The “Who We Are” page on Overstock’s web site, a true and correct

1 copy of which is attached hereto and incorporated by reference herein as Exhibit 3, implies that
2 Overstock owns, stores, and ships all of its products, including Partner Products, to consumers
3 directly; the picture of an Overstock warehouse and a forklift reinforces that impression.

4 98. In many cases, Overstock's claims about its unique position as a purchaser of
5 liquidated merchandise and/or "overstocks" were untrue or misleading statements of fact
6 concerning "[the] reasons for, existence of, and/or amounts of price reductions." See
7 California Civil Code Section 1770(a)(13). Overstock knew or should have known that such
8 claims with respect to its sales of Partner Products were untrue and misleading.

9 99. Overstock's misrepresentations about its business model have reinforced its
10 misrepresentations about other merchants' pricing, and *vice versa*. Overstock's claims that it is
11 acting as a sales channel for liquidated products are more likely to deceive consumers who
12 have been exposed to Overstock's misleading comparative pricing claims. Conversely,
13 Overstock's misrepresentations about other merchant's prices for identical goods are more
14 likely to deceive those consumers who have been exposed to Overstock's claims that it
15 operates as a sales channel for liquidated products even on occasions when it does not. The
16 synergistic effect of these misrepresentations enhances the capacity of those misrepresentations
17 to deceive consumers.

18 100. Overstock's misrepresentations regarding comparative pricing and its business
19 model, taken together and separately, have violated, and continue to violate, California laws
20 prohibiting false advertising and unfair competition.

21
22
23 **FIRST CAUSE OF ACTION**

24 Bus. & Profs. Code § 17500/ § 17536

(Untrue and Misleading Statements Concerning Pricing)

25 101. Plaintiff incorporates by reference paragraphs 1 through 100 as if set forth in
26 full herein.

1 E. that the "Today's Price" for a product was a discount from the price at
2 which other merchants typically offered that identical product for sale.

3 F. that the "You Save" amount for a product accurately represented the
4 discount which consumers would receive by purchasing that product
5 from Overstock instead of from another merchant.

6 G. that Overstock had previously sold that product at the "Comparison
7 Price" advertised for that product.

8 and Defendants knew, or by the exercise of reasonable care should have known, that
9 these claims were untrue and misleading.

10 105. In addition to the allegations made above, each of Defendants' statements,
11 claims, and/or representations pleaded in paragraph 104 above were untrue and misleading
12 because, *inter alia*:

13 A. Defendants set Comparison Prices without ascertaining and/or
14 determining the prices at which other merchants typically sold the
15 identical products;

16 B. Defendants' Comparison Prices were fictitious, having been calculated
17 based on "formula pricing" (as discussed, *supra*) instead of the prices at
18 which other merchants typically sold those identical products;

19 C. Defendants' Comparison Prices were calculated by using the highest
20 sales price at which another merchant was offering the identical product
21 for sale, instead of the price at which other merchants typically offered
22 that product for sale to consumers; and/or

23 D. the Comparison Prices were higher than the "street price" for those same
24 products, and:

25 i. Defendants knew that the Comparison Price was higher than the
26 street price; or

1 ii. Defendants did not know whether other merchants were typically
2 offering the product for sale at that Comparison Price.

3 106. In addition to the allegations made above, when Defendants made or caused to
4 be made the untrue and/or misleading claims, statements, and/or misrepresentations pleaded in
5 paragraph 104 above to consumers in the Counties and elsewhere in the State of California,
6 Defendants failed to adequately disclose the facts pleaded in paragraph 105 above.

7 107. Plaintiff did not discover any of the violations constituting this cause of action
8 until the Shasta County District Attorney's Office received a consumer complaint on July 23,
9 2007. Other than the violation stated in that consumer complaint, plaintiff did not discover that
10 Overstock was routinely making untrue and misleading comparative advertising complaints
11 until on or after November 6, 2008, when Overstock delivered its response to an administrative
12 subpoena served by the Santa Clara County District Attorney's Office. In addition, as a result
13 of the series of agreements between the parties to toll any applicable statutes of limitation
14 (pleaded *supra*), the Tolling Period will not be included in computing the time limited by any
15 statutes of limitation applicable to this cause of action.

16
17

SECOND CAUSE OF ACTION

Business and Professions Code Section 17200
(Violation of Civil Code § 1770(A)(13): Making of False or
Misleading Statements of Fact Concerning Reasons for,
Existence of, or Amounts of Price Reductions)

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108. Plaintiff incorporates by reference paragraphs 1 through 107 as if set forth in full herein.

109. Beginning at a date unknown to Plaintiff, but no later than four years plus the "Tolling Period" pleaded, *supra*, and on each day from that date to the present, Defendants, with the intent to induce members of the public to purchase products offered on the site, made or caused to be made false or misleading statements of fact to consumers in the Counties and elsewhere in the State of California concerning:

- 1 A. the existence and/or amounts of the price reductions represented by the
2 difference between the “List Price” and “Today’s Price”;
3 B. the existence and/or amounts of the price reductions represented by the
4 difference between the “Compare At” Price and “Today’s Price”; and
5 C. the existence and/or amount of the savings to a consumer purchasing a
6 particular product from Overstock instead of another merchant
7 represented by the dollar amount and percentage listed next to the term
8 “You Save”.
9

10 **THIRD CAUSE OF ACTION**

11 Bus. & Prof. Code § 17500 / § 17536

12 (Untrue and Misleading Statements Concerning Source of Products)

13 110. Plaintiff incorporates by reference paragraphs 1 through 109 as if set forth in
14 full herein.

15 111. Beginning at a date unknown to Plaintiff, but no later than January 1, 2006,
16 Defendants, with the intent to induce members of the public to purchase products offered on
17 the site, made or caused to be made to consumers in the Counties and elsewhere in the State of
18 California concerning the sourcing of those products, including but not limited to the following
19 representations:

- 20 A. that Overstock was primarily a liquidator and seller of distressed,
21 second-hand, or discontinued products and/or products sold as part of
22 liquidations of inventory by manufacturers or vendors selling part of
23 their own “overstocks” (which is implied by the company name:
24 “Overstock”);
25 B. that Overstock was “Your Online Outlet”; and
26 C. that Overstock was able to undercut competitors’ pricing because it was
27 purchasing (and reselling) distressed, second-hand, or discontinued
28

1 products, and/or products sold as part of liquidations of inventory by
2 manufacturers or vendors selling part of their own "overstocks".

3 112. In making those representations, Defendants failed to disclose to consumers
4 who were visiting the site that:

5 A. the majority of the products Overstock was offering on the site were in
6 fact being offered by other vendors at Overstock's invitation, and
7 shipped from those third-party vendors' warehouses instead of from
8 Overstock's own facilities; and/or

9 B. Overstock was acting as a broker for products sold by others, and was
10 offering the goods at the suppliers' retail prices instead of at a discount.

11 113. Plaintiff did not discover any of the violations constituting this cause of action
12 until it received a letter from counsel for Overstock to the District Attorney's Office for Shasta
13 County dated on September 7, 2007, which revealed that Overstock was selling Partner
14 Product. In addition, as a result of the series of agreements between the parties to toll any
15 applicable statutes of limitation (pleaded *supra*), the Tolling Period will not be included in
16 computing the time limited by any statutes of limitation applicable to this cause of action.
17

18 **FOURTH CAUSE OF ACTION**

19 Bus. & Prof. Code § 17500 / § 17536

20 (Untrue and Misleading Statements Concerning Shipping Charges)

21 114. Plaintiff incorporates by reference paragraphs 1 through 113 as if set forth in
22 full herein.

23 115. Beginning at a date unknown to Plaintiff, but no later than January 1, 2006, and
24 on each day from that date to the present, Defendants made false or misleading statements of
25 fact relating to whether shipping costs were included in Comparison Prices and/or whether
26 consumers were receiving shipping for free or at a particular cost (as pleaded, *supra*), to
27 consumers in the Counties and elsewhere in the State of California.
28

1 116. Plaintiff did not discover any of the violations constituting this cause of action
2 until it received a letter from counsel for Overstock to the District Attorney's Office for Shasta
3 County dated on September 7, 2007, which suggested that Overstock was using a fixed
4 shipping cost which could mean that they were making the "apples versus oranges"
5 comparison pleaded in paragraphs 89-91, *supra*. Even then, plaintiff did not actually discover
6 that Overstock was routinely making false statements, claims, and/or misrepresentations
7 concerning shipping costs until on or after November 6, 2008, when Overstock delivered its
8 response to an administrative subpoena served by the Santa Clara County District Attorney's
9 Office. In addition, as a result of the series of agreements between the parties to toll any
10 applicable statutes of limitation (pleaded *supra*), the Tolling Period will not be included in
11 computing the time limited by any statutes of limitation applicable to this cause of action.

12
13 **FIFTH CAUSE OF ACTION**

14 Bus. & Profs. Code § 17200

15 (Unlawful and Unfair Business Practices, Including Violation of § 17500)

16 117. Plaintiff incorporates by reference paragraph 1 through 116 as if set forth in full
17 herein.

18 118. Beginning at a date unknown to Plaintiff, but no later than four years plus the
19 "Tolling Period" pleaded, *supra*, and on each day from that date to the present, Defendants
20 violated California Business and Professions Code § 17200 by engaging in unlawful and unfair
21 business practices, including, but not limited to the following acts within the Counties and
22 elsewhere in the State of California:

23 A. Defendants violated California Business and Professions Code § 17500
24 as more particularly described in the First Cause of Action pleaded
25 herein.

26 B. Defendants violated California Business and Professions Code § 17500
27 as more particularly described in the Third Cause of Action pleaded
28 herein.

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C. Defendants violated California Business and Professions Code §17500 as more particularly described in the Fourth Cause of Action pleaded herein.

PRAYER

Wherefore, Plaintiff prays for judgment as follows:

1. That Defendants, their officers, directors, partners, employees, agents and representatives and all persons acting in concert or in participation with Defendants, who have actual or constructive knowledge of the injunction be permanently enjoined from directly or indirectly committing acts of false or misleading advertising or representation, and unlawful and/or unfair business practices, in violation of California Business and Professions Code § 17500, California Business and Professions Code § 17505, and/or California Business and Professions Code Section 17200.

2. That Defendants be ordered to a pay civil penalties in the amount of \$2,500.00 for each violation of California Business and Professions Code § 17500, California Business and Professions Code § 17505, and California Business and Professions Code Section 17200, but at a minimum in an amount of not less than **FIFTEEN MILLION DOLLARS (\$15,000,000.00)**.

3. That this Court award restitution for Defendants' unlawful acts.

4. That Plaintiff be awarded reasonable costs of investigation.

5. That Plaintiff recover costs of suit.

6. That Plaintiff is granted whatever and further relief as this Court deems equitable and just.

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1 RESPECTFULLY REQUESTED:

2 November 17, 2010

NANCY E. O'MALLEY
District Attorney of the County of Alameda

3
4 By: 

5 Matthew L. Beltramo
6 Deputy District Attorney
7 Attorneys for Plaintiff
8 People of the State of California

9 November 17, 2010

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15 November 17, 2010

DEAN D. FLIPPO
District Attorney of the County of Monterey

16 By: 

17 James R. Burlison
18 Deputy District Attorney
19 Attorneys for Plaintiff
20 People of the State of California

21 November 17, 2010

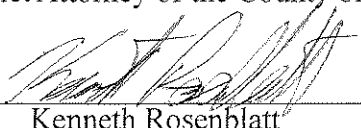
GARY LIEBERSTEIN
District Attorney of the County of Napa

22 By: 

23 Daryl Roberts
24 Deputy District Attorney
25 Attorneys for Plaintiff
26 People of the State of California

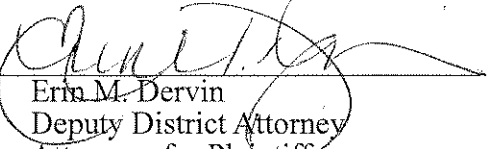
1 November 17, 2010

DOLORES A. CARR
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7 November 17, 2010

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13 November 17, 2010

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15 By: 
Matthew T. Cheever
Deputy District Attorney
Attorneys for Plaintiff
People of the State of California

16
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21
22 **NOTICE:** THIS COMPLAINT IS DEEMED VERIFIED PURSUANT TO CALIFORNIA
23 CODE OF CIVIL PROCEDURE SECTION 446

24
25 **ADDITIONAL NOTICE:** Pursuant to *People v. Beltz Travel Services, Inc.* (N.D. Cal.
26 1974) 379 F.Supp 948, this action cannot be removed to Federal Court.

1 **Appendix A**

2 *Additional Counsel for the People*

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EXHIBIT 1

My Account For best offers, sign in

Your Entire Order Ships for \$1

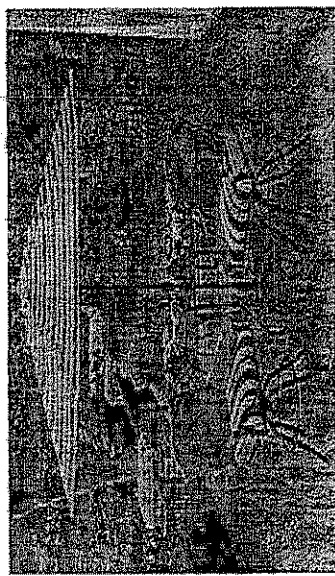


- SEARCH
- furniture home bedding clothing jewelry watches electronics sports entertainment worldstock
- SHIPPING
- TRAVEL
- CARS
- AMUSE

0 item(s) in cart

Home & Garden > Garden & Patio > Patio Furniture > Dining Tables & Chairs

Striped/ Brown Bar Patio Table and 4 Chairs Set



Product Description:

- Patio set has a rich brown finish that blends with any look
- Set includes one table and four chairs
- Outdoor furniture set creates a comfortable, inviting oasis in your own backyard

[Click to read more details](#)

List Price: \$999.99
 Today's Price: \$449.99
 You Save: \$549.01 (55%)
 Catalog #: 104680823

Quantity:

ADD TO CART

You can remove this item later if you'd like.

In Stock if you order today: Leaves our warehouse in 1-4 business days.*

[View Larger Image](#)

Overall Rating: ★★★★★ 3.7
 out of 5
 2 of 3 (67%) customers said they would recommend this product to a friend.
[Read all reviews](#) [Write a review](#)



Best price on the net. Guaranteed.



Save \$22.50 on this order and receive \$1 shipping. [Learn how.](#)

[Read Customer Reviews](#) • [More Info.](#) • [Email to a Friend](#) • [Easy Returns Policy](#)

Striped/ Brown Bar Patio Table and 4 Chairs Set

- Creates a comfortable, inviting oasis in your own backyard
- Set includes one table and four chairs
- Constructed of a durable powder-coated steel frame
- Rich brown finish blends with any look
- Wicker-look resin chair backs
- Comfortable striped upholstered cushions included
- Glass tabletop with an umbrella hole
- Smooth swivel motion chairs
- Table and chairs are all bar height

EXHIBIT 2



Free Shipping Site-Wide+

My Account For best offers, sign in

- furniture
- home
- bedding
- clothing
- jewelry
- watches
- electronics
- sports
- books & more
- worldstock

other stores

SEARCH

All Products

GO

0 item(s) in cart

SHOPPING

AUCTIONS

CARS

COMMUNITY

Online Shopping > Electronics > Telephones > Cell Phone Accessories > Hands-free Devices

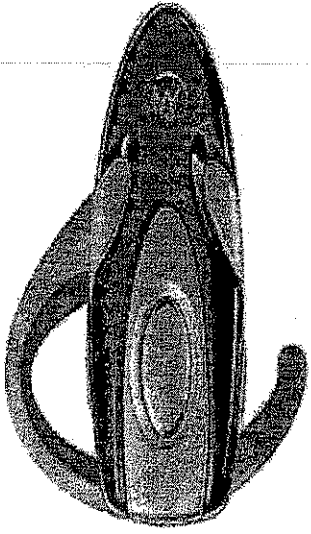
Motorola HS820 Bluetooth Headset

Compare at: ~~\$99.00~~

Today's Price: **\$27.99**

You Save: \$72.00 (72%)

Catalog #: 10464664



View Larger Image

Product Description:

- Bluetooth 1.2 compatibility for faster connections, better audio quality, adaptive frequency hopping and improved interference rejection
- Handsfree
- Wireless connection to compatible phone up to 30 feet away

[Click to read more details](#)

This product is not in stock. We will notify you when this product is in stock. Please enter your email address below, then click 'Go'.

GO

Sold Out!

[Add Two-Year Platinum Protection Plan for \\$6.99](#)

Overall Rating: ★★★★★ 4 out of 5
 81 of 99 (82%) customers said they would recommend this product to a friend.
[Read all reviews](#) [Write a review](#)



Best price on the net. Guaranteed.



Save \$1.40 on this order and receive \$1 shipping. [Learn how.](#)

EXHIBIT 3

- Shopping
- Community
- Cars
- Real Estate
- Auctions

- [We Recommend](#)
- [My Account](#)
- [Sign In](#)
-
- [Help](#)

Shipping to:



\$1 Shipping on your entire order.
*Excludes AK, HI, Int'l. Books, Music, Movies & Games

[Browse Departments](#)

Overstock.com Information

Use tabs below to navigate our about pages.

- [Who We Are](#)
- [Leadership](#)
- [Careers](#)
- [Investor Relations & Press Room](#)
- [Business Programs](#)
- [Contact Us](#)

Who We Are

[Who We Are](#) | [Our Business](#) | [Our History](#)

Overstock.com is an online retailer offering a wide variety of high-quality, brand-name merchandise at discount prices, including bedding, home decor, appliances, watches, jewelry, electronics, sporting goods, clothing and shoes. We give customers an opportunity to shop for bargains conveniently, while offering manufacturers, distributors and other retailers an alternative sales channel for liquidating their inventory.

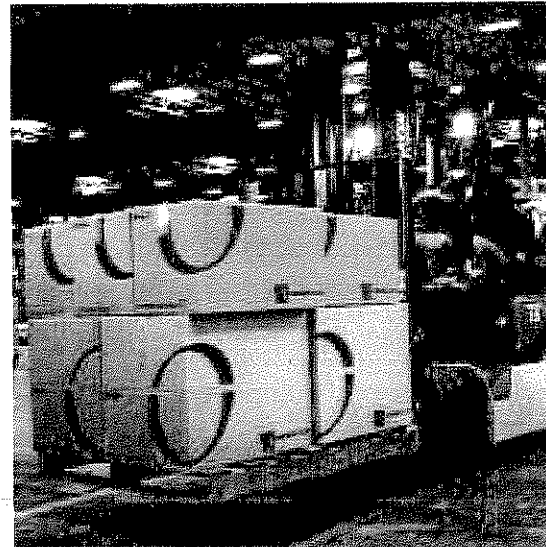
Corporate Stats

Headquarters: Salt Lake City, UT
 Year Started: 1999
 Revenue in 1999: \$1,835,000
 Revenue in 2009: \$876,769,000
 Number of Products on Site: 829,000
 Number of Employees: 1,286

Customer Service Awards

The National Retail Federation has announced that Overstock.com is now #2 in customer service nationwide.
[National Retail Foundation - Click Here](#)

Overstock.com Awarded 2008 User's Choice Award for Customer Relationship Management Excellence
[Gartner CRM - Click Here](#)



Overstock.com Forklift and Boxes

Our Vision

Overstock.com provides online shoppers the best value and a superior customer experience. We are honest, helpful, efficient, accountable and trustworthy, and we are committed to profitability and service. We want our colleagues and customers to feel At Home with the "O".



Receive discounts and coupons in our email newsletter

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Help & Support



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Buy Overstock



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[International Website](#)

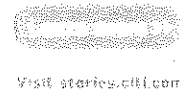
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EXHIBIT 4



Earn 5x the points at restaurants with the Citi ForwardSM Card.



BusinessWeek

* Close Window

MARCH 15, 2004

UP FRONT

Overstock: The Price Isn't Always Right

Patrick M. Byrne, chairman of Overstock.com, promotes his company as the place to shop online for prices up to 80% below list. But, Overstock may be overstating some discounts.

Spot checks by *BusinessWeek* found close to 100 instances where Overstock misstated the manufacturer's suggested list price on items like digital cameras, clothes, and TVs. The \$240 million e-tailer carries about 12,000 items, outside of its huge book and music store. For a few, it undershot the list price. But most errors made discounts seem larger. "If they've falsely claimed what the manufacturer's list price is, that's not lawful," says Andrea Levine, a director of the Council of Better Business Bureaus.

Byrne says there was no intentional deception. He blames most slips on manufacturers' changing list prices. "We bend over backwards to get this right," he says.

BusinessWeek's checks are in line with the findings of a hedge fund (which declined to be identified) that has shorted Overstock. *BusinessWeek* found the most incorrect prices in consumer electronics: Of the 92 Toshiba and Panasonic products available Mar. 2, 40 had list prices higher than the manufacturers' list. Five were too low.

In watches and books, list prices were more reliable. But will a company promising big bargains look as attractive if some discounts are less than they seem?

By Timothy J. Mullaney, with Brian Hindo

Graphic: You Save How Much?

YOU SAVE HOW MUCH?

ITEM	OVERSTOCK'S "LIST"	MANUFACTURER'S LIST
TOSHIBA TV MODEL 36AF43	\$1,699	\$999
JVC HOME THEATER MODEL DS-TP582	\$550	\$440
FUJI FINEPIX MODEL 2650	\$299	\$199



Data: Overstock.com and manufacturer Web sites. Prices as of the week of Feb. 21.